No. 9492

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK A. DOUGHERTY, *Appellant,* vs. JOHN V. LEWIS, former Collector of Internal Revenue for the First District of California, *Appellee.*	}

BRIEF FOR APPELLEE.

FRANK J. HENNESSY,
United States Attorney,

W. E. LICKING,
Assistant United States Attorney,

W. F. MATHEWSON,
Assistant United States Attorney,
Post Office Building, San Francisco,
Attorneys for Appellee.

FILED

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

Page

Statement of Basis of Original and Appellate Jurisdiction.. 1

Statement of the Case.................................. 1

Summary of the Evidence................................ 2

Specifications of Error 2

Argument 3

Question 3

Knowledge and excessive rental....................... 3

Purpose of Section 2800(d)........................... 5

Taxing statutes in case of doubt are to be construed in favor of the taxpayer............................ 5

Who is "a person in any manner interested in"?...... 6

The doctrine of ejusdem generis is not applicable...... 15

Webster's definition of "interest".................... 18

The Van Slyke case.................................. 19

Doyle v. Scott, et al................................ 20

Richter v. Henningsen 21

Conclusion 21

Table of Authorities Cited

Cases

Pages

Brown v. State (Ark. 1923), 255 S. W. 878, 879.......... 9

Danciger et al., Doing Business as Danciger Brothers v. Cooley (1919), 248 U. S. 319, 326...................... 16

Mason et al. v. United States (1923), 260 U. S. 545 at p. 554 16

Mayes v. Casey, 252 Fed. 754............................ 20

Richter v. Henningsen, 110 Cal. 530...................... 21

U. S. Fidelity & Guaranty Co. v. U. S. (CCA-2, 1912), 201 Fed. 91, 92 20

U. S. v. Stowell, 133 U. S. 1, 12......................... 6

U. S. v. Van Slyke, 28 Fed. Cas. 363 (Case No. 16,610) 4, 19, 20

U. S. v. Wolters, et al. (S. D. Cal. 1891), 46 Fed. 509, 510 ....6, 7, 9, 21

Statutes

Congressional Globe, Pt. 4, Vol. 152, pp. 3738, 3746 and 3831 (2d Session 40th Cong.).......................11, 12

59 Corpus Juris 982, Sec. 581.......................... 16

15 Stats. 125 10

Title 26 U. S. C. A., Sec. 2800(d) (Sec. 3251 R. S.)........ 3

Title 26 U. S. C. A., Sec. 2800(d) (Sec. 1 I. R. L. 1868).... ....5, 6, 9, 15, 19, 21

Title 26 U. S. C. A., Sec. 2815(b)(1)..................... 14

Title 26 U. S. C. A., Sec. 2833 (Sec. 44 of The Act—1868)..14, 15

No. 9492

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK A. DOUGHERTY, *Appellant,* vs. JOHN V. LEWIS, former Collector of Internal Revenue for the First District of California, *Appellee.*	

BRIEF FOR APPELLEE.

STATEMENT OF BASIS OF ORIGINAL AND APPELLATE JURISDICTION.

The appellee concurs with appellant in his statement of the basis of the original and appellate jurisdiction.

STATEMENT OF THE CASE.

The appellee concurs with the appellant in his statement of the case.

SUMMARY OF THE EVIDENCE.

The summary of the evidence made by the appellant is truthful but, in appellee's opinion, is not sufficiently comprehensive. Appellee believes that the following statements should be added to the summary of the evidence:

Julius Bianchini also testified that the appellant was told that they wanted just the barn to operate a still, with enough land to get to the barn, maybe five or ten acres, and that the lease was prepared to "save" the appellant; that they moved in in October, 1934, took thirty days to set up the still and operated 21 or 22 days, then ceased operations for four months when they again operated 13 days; that they paid appellant $125.00 twice in 1934 and $125.00 when they resumed operations in 1935.

Guiseppi Biagi also testified that they told the appellant they wanted only the barn and the front and that appellant included the 20 acres; that the still was shut down after 21 or 22 days because alcohol was so cheap they could make no profit.

Angelo Rodoni also testified that they told appellant they wanted to rent the barn to make whiskey and that they would make a lease to show it was rented for cattle.

SPECIFICATIONS OF ERROR.

Appellee denies that the trial Court committed the two specified errors and asserts:

I.

The evidence is sufficient as a matter of law to support the judgment in favor of respondent (appellee) and

II.

The trial Court did not err in a matter of law in holding under the evidence that appellant was, within the meaning of Section 3251 of the Revised Statutes (Section 2800 (d) of Title 26, United States Code Annotated) a "person interested in the use of the still, distillery and distilling apparatus".

ARGUMENT.

QUESTION.

Appellee concedes that the appellant was not a "proprietor or possessor" within the meaning of the statute.

Appellee concedes that the only question to be determined is whether on the evidence appellant was a *person in any manner interested in the use of any still,* distillery or distilling apparatus.

KNOWLEDGE AND EXCESSIVE RENTAL.

The appellant admitted on page 5 of appellant's opening brief that the trial Court found on conflicting evidence that appellant had knowledge of the existence of the still and that appellant did receive

excessive rent for his premises. Appellant also stated that he would not contest the findings of the trial Court on these questions.

As pointed out in the appellee's summary of the evidence the appellant's summary is too narrow. The findings of the Court with respect to knowledge and rent are broader than admitted by appellant. The pertinent findings are in Findings of Facts and Conclusions of Law, paragraph II (Tr. pp. 31 and 32).

Assuming, however, that the trial Court found that appellant only had knowledge of the operation of the illicit still (rather than actively entering into an agreement for its establishment and concealment) and that appellant only received excessive rental (rather than an amount of money so disproportionate to rental it could no longer be called rental, paid at times coincidental with the profitable operation of the distillery), such knowledge and rental are not immaterial. Without knowledge of the operation the appellant could not under any construction of the statute be interested in the distillery.

As the trial Court pointed out in its memorandum opinion (Tr. p. 25), the Court in the case of *United States v. Van Slyke,* 28 Fed. Cas. 363 (Case No. 16,610), relied upon by appellant (Appellant's Opening Brief p. 11), stated on page 365:

> "But his knowledge, if he had such knowledge, that the distillery was being run contrary to law and that the taxes were not being paid, and his conduct in relation thereto, are all to be considered as part of the evidence in this case, and it is for

you to say how far they bear upon the question of his interest in the distillery business."

PURPOSE OF SECTION 2800 (d).

Appellee admits that the provisions of the statute were adopted to secure to the government the payment of the taxes imposed by law on distilled spirits and that the tax is payable to the government whether the spirits are produced legally or illegally.

TAXING STATUTES IN CASE OF DOUBT ARE TO BE CONSTRUED IN FAVOR OF THE TAXPAYER.

The appellant has cited two cases in support of the proposition "Taxing statutes in case of doubt are to be construed in favor of the taxpayer". The cases are not authority for the proposition. Both cases merely hold that a statute *levying* a tax must not be construed to embrace matters not specifically pointed out, i. e., the subject matter of the levy. In the case at bar the tax is levied on distilled spirits and the section in question is intended to prevent the evasion of the tax.

Section 2800 (d), of Title 26, United States Code Annotated which is derived from Section 1 of the Internal Revenue Laws of 1868 is not only a tax measure, it is one of the Internal Revenue Laws and as such, unlike a penal law, it is not to be strictly construed, nor is it like a remedial statute, to be construed

with extraordinary liberality, but it should be so construed as most effectually to accomplish the intention of Congress in passing it.

U. S. v. Stowell, 133 U. S. 1, 12.

One of the purposes of Section 2800 (d) is the prevention of fraud upon the Government. In *United States v. Wolters, et al.* (S. D. Cal. 1891), 46 Fed. 509, 510, the Court stated with respect to this section now under consideration, and its provision:

> "Revenue laws are not, like penal laws, to be strictly construed, nor are they, like remedial statutes, to be construed with extraordinary liberality; but they should be so construed 'as most effectually to accomplish the intention of the legislature in passing them'. *Taylor v. U. S.,* 3 Howard 197. The provisions of the law are rigid, and in some instances perhaps arbitrary, in their operation. But they were designed to prevent frauds upon the government, and whoever engages in business by virtue of their provisions must be governed by them."

WHO IS "A PERSON IN ANY MANNER INTERESTED IN"?

Appellant states that it is his position that "a landlord or a lessor is not a 'person in any manner interested in', within the meaning of the statute in question".

As a logical matter, a landlord or a lessor could be "a person in any manner interested in" the use of a still just as he could be a "proprietor" or "possessor" of a still. The fact that a person is a landlord or a

lessor of premises upon which a distillery is located does not in itself remove him from the purview of the statute.

If a person were a landlord or a lessor of premises upon which a properly registered and bonded distillery operated and the landlord's only financial interest was a reasonable and normal rent the appellee would admit that the landlord or lessor was not a person interested in the distillery.

If, however, a person were a landlord or a lessor of premises upon which an unregistered, unbounded, illegal distillery were in operation with the landlord's knowledge, appellee contends that the landlord or lessor would be a person interested in the use of the distillery. The purpose of Section 2800 (d) was to prevent frauds upon the Government.

> *United States v. Wolters, et al.* (S. D. Cal. 1891), 46 Fed. 509, 510.

A landlord or lessor of premises upon which an unregistered, unbonded distillery is operated with the knowledge of the landlord or lessor, definitely aids the operators in perpetrating a fraud upon the Government.

The appellant in this case, however, was more than a landlord with mere knowledge that an illicit distillery was operated on the leased premises and that the source of his rental was the profits of the illegal enterprise. The appellant was "interested in" the use of the still even within the narrow definition of the phrase as devised and stated on page 10 of the

appellant's brief. The appellant was interested in the losses and the profits and the success and failure of the business. The appellant was advised by the still operators that they wanted the barn to operate a still; that they wanted only enough land for ingress and egress to the barn; that they would sign a lease to "save" the appellant; and that the rental would be $125.00 per month (so disproportionate to the actual rental value as to cease to be rent). Thus with full knowledge of the enterprise the appellant permitted the operators to consummate upon his property a tax evading scheme; he effectively furnished them more than the use of a barn or land or water. By agreement made before the enterprise was established, he furnished a vital element of the enterprise, concealment. This was far more than mere knowledge of the existence of a still acquired after it was in operation. The so-called "rent" appellant received was not only excessive but was paid only when the distillery was profitably operating. The still was set up and operated 21 or 22 days. "Rent" was paid for October when it was set up and for November when it was operated. The still shut down for four months because no profit could be made and during that time no "rent" was paid to appellant. "Rent" was paid again when operation was resumed.

Appellant had no right to rental for the premises because they were knowingly leased for an unlawful purpose and surely the use of a term "rental" cannot be successfully employed to conceal a payment from the profits of a still for furnishing a place of

concealment especially when that term is knowingly employed to enable the appellant to escape his tax and criminal liability.

The *Wolters* case demonstrates that the Court should so construe Section 2800 (d) as to prevent the appellant here from successfully consummating a planned fraud upon the revenue.

The appellant certainly knowingly assisted Biagi, Bianchini and Rodoni in the perpetration of a fraud, and most certainly, if it is possible to so construe Section 2800 (d), it should be construed to prevent the successful perpetration of a fraud upon the revenue.

That the language "interested in" has been interpreted to mean "assist" is shown by the case of *Brown v. State,* (Ark. 1923), 255 S. W. 878, 879, where the Court stated:

> " 'Where the intermediary between the purchaser and the seller is a necessary factor, without whose assistance the sale of liquor could not have been consummated he is interested in the sale, in the sense of the law, whether he has * * * pecuniary interest or not'."

Surely in the instant case appellant was an intermediary who made possible the utilization of his land by men whom he knew intended to use that land to defraud the revenue. He assisted them in the consummation of an illegal, fraudulent enterprise. Without appellant's assistance in furnishing a place of concealment the fraudulent enterprise would not have been possible.

It is respectfully urged that a construction which necessitates the finding of pecuniary interest will be contrary to the intention of Congress in the enactment of this legislation.

Reference is respectfully made to the discussions that occurred and the debates that were had in the House of Representatives, commencing on June 23, 1868, and continuing until the final enactment and approval of this Section as Section 1 of an *"Act imposing taxes on distilled spirits and tobacco and for other purposes"*, 40th Congress, Session II, Chapter 186, approved July 20, 1868, 15 Stats. 125. These discussions and debates may best be summarized by a statement that at the time of the consideration of this Section immediately following the Civil War, the Fortieth Congress had under consideration methods and means of circumventing and preventing frauds in connection with the distillation of distilled spirits that had assumed such huge proportions that Congress felt that it was necessary to the very safety of the Government to take steps to break the strangle-hold of a large group of illicit distillers and corrupt Internal Revenue Agents known as the "whiskey ring". To accomplish this purpose Congress revamped the Internal Revenue Laws, reduced the taxes from $2.00 per gallon to 50 cents per gallon and changed the place for tax payment from the bonded warehouse to the distillery itself. That Congress intended that this Section should be strictly construed must be evident from the debates which demonstrated

that it was Congress' supreme effort to prevent tax evasion.

Although there was no direct debate with respect to this particular provision of Section 1, that Congress intended to make liable persons other than proprietors or possessors of stills is evident from the amendment offered by Senator Morrill of Vermont appearing on page 3831 of Vol. 152 of the Congressional Globe, Pt. 4, 2nd Session, 40th Congress. There Mr. Morrill proposed an amendment:

> "I desire to propose a few amendments, to which I think there will be no objection, which are merely verbal. On page 27, line 16 of Section Twenty-one, after the word 'distiller', I move to insert 'or other persons liable'. By reference to page 2, line fourteen of section one, it will be seen that there are some other persons who may be liable and therefore, they ought to be included here.
>
> The amendment was agreed to."

Section 1 as referred to in this quotation, appears as Section 1 of Page 3738 of Volume 152 of the Congressional Globe:

> "*Be it enacted, &c.,* That there shall be levied and collected on all distilled spirits on which the tax prescribed by law has not been paid, a tax of fifty cents on each and every proof gallon, to be paid by the distiller, owner, or person having possession thereof before removal from distillery warehouse; and the tax on such spirits shall be collected on the whole number of gauge or wine gallons when below proof, and shall be increased in proportion for any greater strength

than the strength of proof-spirit as defined in this act; and any fractional part of a gallon in excess of the number of gallons in a cask or package, shall be taxed as a gallon. Every proprietor or possessor of a still, distillery, or distilling apparatus, and every person in any manner interested in the use of any such still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom and the tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, and on the lot or tract of land whereon the said distillery is situated, together with any building thereon, from the time said spirits are distilled until the said tax shall be paid."

Section 21 there referred to appears as Section (19) 20, on page 3746 of Volume 152 of the Congressional Globe:

"Sec. (19) 20. *And be it further enacted,* That on the receipt of the distiller's first return in each month the assessor shall proceed to inquire and determine whether said distiller has accounted in his returns for the preceding month for all the spirits produced by him; and to determine the quantity of spirits thus to be accounted for, the whole quantity of spirits produced from the materials used shall be ascertained; and forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses. In case the return of the distiller

shall have been [less than the quantity thus ascertained, the distiller] (line 16) shall be assessed for such deficiency at the rate of fifty cents for every proof gallon, and the collector shall proceed to collect the same as in cases of other assessments for deficiencies; but in no case shall the quantity of spirits returned by the distiller, together with the quantity so assessed, be for a less quantity of spirits than eighty per cent, of the producing capacity of the distillery."

As amended, Section 21 appears as Section 20 in the Act, 15 Statutes at Large 133:

"Sec. 20. *And be it further enacted,* That on receipt of the distiller's first return in each month, the assessor shall inquire and determine whether said distiller has accounted in his returns for the preceding month for all the spirits produced by him; and to determine the quantity of spirits thus to be accounted for, the whole quantity of materials used for the production of spirits shall be ascertained; and forty-five gallons of mash or beer brewed or fermented from grain shall represent not less than one bushel of grain, and seven gallons of mash or beer brewed or fermented from molasses shall represent not less than one gallon of molasses. In case the return of the distiller shall have been less than the quantity thus ascertained, the distiller *or other person liable* (Italics ours) shall be assessed for such deficiency at the rate of fifty cents for every proof gallon, together with the special tax of four dollars for every cask of forty proof gallons, and the collector shall proceed to collect the same as in cases of other assessments for deficiencies; but in no case shall the quantity of spirits returned

> by the distiller, together with the quantity so assessed, be for a less quantity of spirits than eighty percentum of the producing capacity of the distillery, as estimated under the provisions of this act."

It is apparent from the provisions of Section 2815 (b) (1) of Title 26 U.S.C.A., that Congress had under consideration the problem of tax collection when the distillery premises were owned by one other than the distiller. It is there provided in substance that a lessee distiller cannot establish a bonded distillery unless he first files with the Collector the written consent of the lessor, in which the owner must consent that the premises may be used for distilling spirits, that the lien of the United States for taxes and penalties shall attach to the land and that in the event of forfeiture of the distillery or any parts of it, title to the land shall vest in the United States.

Section 2833 of Title 26, which appears as Section 44 of the Act as passed in 1868, provides that if the owner of real estate suffers or permits the carrying on of the business of a distiller upon his land without the distiller giving a bond or if the owner of the land connives at the same, that all of the owner's right, title and interest in the land shall be forfeited. That section also provides that the interest of every person in any premises used for ingress or egress to or from the distillery, who has knowingly suffered or permitted his premises to be used for such ingress or egress shall be forfeited to the United States. Thus if the appellant had owned this property, the property

itself would have been forfeited to the United States. Appellant's leasehold interest was forfeitable under Section 2833 but was valueless. Can it be said that it is a proper construction of Section 2800(d) that appellant, who suffered, permitted and connived at the conduct of an illicit distillery upon his property, was considered by Congress as sufficiently interested in the use of the still to cause Congress to forfeit his interest in the property, but that Congress did not consider him as sufficiently interested in the use of the still to make him liable for taxes? It is apparent from the amendment of Senator Morrill that Congress intended that this language—"in any manner interested", should be construed broadly.

THE DOCTRINE OF EJUSDEM GENERIS IS NOT APPLICABLE.

The form of the phrase precludes the application of the rule. The statute established two classes: proprietors or possessors of stills *and* every person in any manner interested in the use of a distillery. It is apparent that the second phrase *describes* a class or genus. It is more than a "general word" which, following a number of words describing species within a class must be considered as covering all unnamed species within the same class. Such general words are almost universally preceded by the word "other" in those cases where the doctrine of *ejusdem generis* is applied. In the statute at hand we have two classes described; the second class is larger than the first and has a definite and clear meaning not dependent

upon the existence of the "specie" words "proprietors" or "possessors".

Assuming, however, that the form permits of the application of the rule, it must be remembered that the doctrine of *ejusdem generis* is only a rule of construction to be applied as an aid in ascertaining the legislative intent, and cannot control where the plain purpose and intent of the legislature would thereby be hindered or defeated.

59 *Corpus Juris* 982, Sec. 581.

The restricted use of the rule is well expressed by Mr. Justice Sutherland in *Mason et al. v. United States* (1923), 260 U. S. 545 at page 554, as follows:

> "The rule is one well established and frequently invoked, but it is, after all, a rule of *construction,* to be resorted to only as an aid to the ascertainment of the meaning of doubtful words and phrases, and not to control or limit their meaning contrary to the true intent. It cannot be employed to render general words meaningless, since that would be to disregard the primary rules, that effect should be given to every part of a statute, if legitimately possible, and that the words of a statute or other document are to be taken according to their natural meaning. Here the supposed specific words are sufficiently comprehensive to exhaust the genus and leave nothing essentially similar upon which the general words may operate."

As Mr. Justice Van Devanter stated in *Danciger et al., Doing Business as Danciger Brothers v. Cooley* (1919), 248 U. S. 319 at page 326, in construing a statute employing somewhat similar language and construction:

"The first, as before quoted, says:

'Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any * * * intoxicating liquor * * * from one State * * * into any other State, * * * shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, * * * shall be fined,' etc.

The words 'any railroad company, express company, or other common carrier', comprehend all public carriers; and the words 'or any other person' are equally broad. When combined they perfectly express a purpose to include all common carriers and all persons; and it does not detract from this view that the inclusion of railroad companies and express companies is emphasized by specially naming them. To hold that the words 'or any other person' have the same meaning as if they were 'or any agent of a common carrier' would be not merely to depart from the primary rule that words are to be taken in their ordinary sense, but to narrow the operation of the statute to an extent that would seriously imperil the accomplishment of its purpose. The rule that where particular words of description are followed by general terms the latter will be regarded as applicable only to persons or things of a like class is invoked in this connection, but it is far from being of universal application, and never is applied when to do so will give to a statute an operation different from that intended by the body enacting it. Its proper office is to give effect to the true intention of that body, not to defeat it."

WEBSTER'S DEFINITION OF "INTEREST".

"Interest" as defined in Webster's New International Dictionary, Second Edition (1937) has ten different meanings, two of which are as follows:

> "1. A right, title, share, or participation in a thing, as, formerly, in the production of an effect; specif., participation in advantage, profit, and responsibility; as, an *interest* in a bakery. Hence, that in which one has such an *interest,* esp., business affairs; business; as, his *interests* are in silk imports.
>
> 2. Concern, or the state of being concerned or affected, esp. with respect to advantage, personal or general; hence, good, regarded as a selfish benefit; profit; benefit."

Appellant chooses but one meaning for the word "interest" which is not used in the statute. The word used in the statute is "interested".

"Interested" is defined as follows:

> "1. Having the attention engaged; having emotion or passion excited; as, an *interested* listener.
> 2. Having an interest; having a share or concern in some project or affair; involved; liable to be affected or prejudiced; as, an *interested* witness; having self-interest; not disinterested; as, generosity proceeding from *interested* motives."

That Congress intended that this broad adjective should be given a broad meaning is evidenced by the use of the broad phrase "in any manner".

THE VAN SLYKE CASE.

The Court permitted the *Van Slyke* case to go to the jury. The Court, therefore, believed that there was sufficient evidence for the jury to find that the interest of Van Slyke made him liable under the provisions of Section 2800(d). The Court's instruction does not disclose this evidence. It is not apparent whether or not the rental was so excessive as to constitute a financial interest other than a lessor's interest. It is not apparent what evidence caused the United States Attorney to contend that the lease and contract were documents used to cloak a more substantial interest than the interest of a lessor. It is not apparent what showing was made that Van Slyke knew of the illicit operation in an otherwise lawfully operated, registered and bonded distillery, although the Court instructed the jury to consider this knowledge in determining Van Slyke's interest. There was apparently no showing that Van Slyke deliberately connived with his lawful lessees to commit unlawful acts. There was apparently no showing that Van Slyke was entitled to the immediate possession of the premises, as appellant was, had he cared to enforce the covenant against the illegal use of his property.

In the *Van Slyke* case the Court and jury considered a registered and bonded enterprise from which the lessor could lawfully accept rent to permit the conduct of an apparently lawful business on property which he held for his bank; property which had been forfeited to the United States previous to the action for taxes. In this case the Court has under

consideration an unlawfully established and operated enterprise from which appellant could not lawfully accept rent to permit the conduct of the unlawful business on his property.

In the *Van Slyke* case there was a lawful business tainted with illegal conduct. In the case at bar there is an unlawful enterprise with the sole appearance of legality consisting of a lease prepared to successfully consummate the illegality.

In the *Van Slyke* case the burden of proof was upon the plaintiff, the United States. In the case at bar the burden of proof was upon the appellant.

U. S. Fidelity & Guaranty Co. v. United States (CCA—2, 1912), 201 Fed. 91, 92;
Mayes v. Casey, 252 Fed. 754.

DOYLE v. SCOTT, ET AL.

This case cited by appellant for his proposition that excessive rental does not make him "a person in any manner interested in the use of any still, etc." is not applicable authority. The obvious purpose of the Texas statute was to require a revelation of all persons who were in control of the business of liquor dealing. It was a regulatory measure for the control of the liquor business. The purpose of the statute did not require the revelation of persons interested unless they controlled the business or shared the control. The statute under consideration is a tax measure obviously designed to make liable for taxes all persons who benefit financially from the operation or enable others to evade taxes.

RICHTER v. HENNINGSAN.

The case of *Richter v. Henningsan,* 110 Cal. 530, is not authority for the proposition cited by plaintiff. This case, as does the case of *United States v. Wolters et al.,* supra, holds that a stockholder, although not a proprietor or possessor, is interested in the operation of the still. The case is not authority for the proposition that a pecuniary interest is necessary to establish an interest in the still within the meaning of Section 2800(d).

Appellee submits that under the authorities cited above as applied to the findings of the trial Court based upon the evidence adduced at the trial the appellant was a person in "any manner interested in the use of a still, etc." within the meaning of the statute under discussion.

CONCLUSION.

Appellee, therefore, respectfully submits that the judgment of the District Court be affirmed.

Dated, San Francisco,
July 10, 1940.

Respectfully submitted,

Frank J. Hennessy,
United States Attorney,

W. E. Licking,
Assistant United States Attorney,

W. F. Mathewson,
Assistant United States Attorney,

Attorneys for Appellee.